HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 1736 of 2007.
Reserved on: 20.12.2007.
Decided on: 27.12.2007.

Hem Deep Sharma ..... Petitioner.

Versus

State of Himachal Pradesh and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the petitioner:	Mr.J.L. Bhardwaj, Advocate.
For respondent No.1:	Mr.M.S. Chandel, Advocate General, with Mr.R.M. Bisht, Deputy Advocate General.
For respondents No.2 & 3:	Mr.V.D. Khidta, Advocate.

Per V.K. Ahuja, J:

This judgment shall dispose of the writ petition filed by the petitioner under Articles 226/227 of the Constitution of India praying therein for issuance of directions to the respondents to admit the petitioner for B.Ed. Course in any of the colleges affiliated to the respondents.

It has been alleged by the petitioner that he did his matriculation in the year 1997 and graduation in the year 2005 obtaining 51.50% marks. The petitioner alleged that he could not appear in the entrance test conducted by the H.P. University for filling up the seats for B.Ed. Course. He alleged that he was eligible for applying to the B.Ed. course and he prayed that he should be given

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Whether reporters of local newspapers may be allowed to see the judgment? Yes.

admission to the B.Ed. Course on the basis of marks obtained in graduation, waiving of the condition of 35% marks obtained in the entrance test since a number of seats are lying vacant and, therefore, the petitioner should be permitted to get admission on the basis of the marks obtained in the qualifying examination. Hence the writ petition filed by the petitioner seeking direction to the respondents to relax the condition of the entrance test since the seats with respect of Himachali quota are still lying vacant.

No separate reply was filed in this case. However, the learned counsel for respondents No.2 and 3, during the course of arguments, submitted that he had made a statement in the Court that the reply filed in CWP No.1778 of 2007 be read in this case also, which fact was not recorded in the order sheet. But since all these files were being taken together and this submission has been made by the learned counsel for respondents No.2 and 3, the reply filed in CWP No.1778 of 2007 is being considered.

In reply by respondents No.2 and 3, they admitted that the petitioner was entitled to admit 60 students. They further pleaded that they had conducted the counseling for MCA Course for petitioner-Institute firstly on 13th October, 2007 and secondly on 14th October, 2007, as per the criteria laid down in the Hand Book of Information. It was further submitted that the candidates were accordingly sponsored to the petitioner-Institute as per the merit of the entrance test. However, since the date-sheet for the conduct of examination of MCA Course 1st Semester has already been issued and the examination has to start w.e.f. 28th November, 2007, all the students admitted in the MCA Course are required to complete 75% lectures and the Institution had to conduct classes at least for 180 days. Thus, the students cannot be sponsored at this stage by

having fresh entrance test or permitting the petitioner-Institute to admit the students. They also pleaded that in case of LL.B.Course, as per Ordinance 1.4 of the Himachal Pradesh University First Ordinances, 1973, the Vice Chancellor was entitled to allow admission to LL.B./B.A. LL.B. (Hons.) Courses to be made on academic merit and, therefore, same criteria cannot be applied for admission to MCA Course. The respondents in their reply also relied upon the judgment of this Court in Dreamz College case that no counseling can be permitted after the last date and no students can be admitted midstream even if the seats are unfilled.

We have heard the learned counsel for the parties and have gone through the pleadings of the parties also.

The submissions made by the learned counsel for the petitioner were that the petitioner should be allowed to be admitted in B.Ed. Course on the basis of marks obtained in qualifying examination. Reliance was placed by the learned counsel for the petitioner on a decision of the Apex Court in Civil Appeal No.4640 of 2007, decided on October 4, 2007.

A perusal of the decision of the Apex Court (supra) shows that it has been observed that one of the eligibility condition for admission in B.Ed. Course which was 35% marks in the entrance test has been waived of and no entrance test is required for giving admission to the outside students for admission in B.Ed. Course. Therefore, it was submitted that in pursuance of the judgment passed by the Apex Court, the University had advertised and had called for applications for 15% B.Ed. seats from the candidates belonging to the State other than the State of Himachal Pradesh for regular B.Ed. Course for the session 2007-08. Thus, it was submitted that the remaining seats in regard to quota for Himachali students should be allowed to be filled on similar basis considering the

marks obtained in qualifying examination. A copy of the said judgment was attached with the case file and the perusal of the same shows that the following directions were issued by their Lordships:

> *"Considering the fact that under the circular issued on 5th September, 2007, no entrance test is required for giving admission to the outside students for admission to the B.Ed. course and considering the fact that there is sufficient time for completing the process of admission in the fifteen per cent quota to the outside students, we direct that the University shall issue an advertisement inviting applications from outside State students for admission to the B.Ed. course in various colleges affiliated to the University for imparting education for B.Ed. course by issuance of advertisement in the national news papers by 11th October, 2007. The last date to submit the forms would be 20th October, 2007. After the scrutiny of the admission forms, the University shall undertake counselling, which shall be completed by 30th October, 2007, and eligible students will be allocated different colleges for their admissions by 2nd November, 2007, so that the entire process of admission would be completed by that date."*

It is, therefore, clear from a perusal of the above decision that the admission had to be completed by 30th October, 2007. But in the present case, that period is already over and no such directions can be given to the petitioner to issue fresh advertisements for admission for the academic session 2007-08 and, therefore, the prayer made by the petitioner for permission to admit students or for directions to the respondent to allow the petitioner to admit students on the basis of the marks obtained in qualifying examination cannot be permitted at this belated stage. The said plea can be considered by the University as and when made for the next academic session and, therefore, no relief can be given on the basis of the judgment of the Apex Court referred to above.

A Division Bench of this Court had considered the question of admissions in CWP No.1397 of 2007, titled Dreamz College of Pharmacy and another v. State of H.P. and others, decided on 14.9.2007, in which it was held that the

academic calendar prepared by the University or any other educational institution has to be strictly adhered to and no midstream admissions can be permitted.

In view of above discussion, it is clear that the petitioner cannot be permitted at this belated stage to be granted admission for entrance to B.Ed. Course since he is required to complete the prescribed minimum lecture condition and the process of admission is already over, as per the judgment of the Apex Court and that time cannot be extended by this Court. Therefore, the petitioner is not entitled to be admitted to the B.Ed. Course at this belated stage. Thus, there is no merit in the writ petition filed by the petitioner, which is dismissed accordingly. There is no order as to cots.

In view of the final disposal of the main petition, all the pending applications shall also stand disposed of.

(Deepak Gupta),
Judge.

(V.K. Ahuja),
Judge.

December 27, 2007. (TILAK)